

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5735 of 1984

Date of decision: 5-5-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMKISHORE GAURISHANKER DUBE

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner
Mr. H. L. Jani for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:5-5-97

CAV JUDGEMENT

The petitioner, a Police Inspector of the Police Department of the State of Gujarat, has filed this special civil application praying for issue of a writ of mandamus directing the respondents to give him deemed date of promotion, and to pay him notional pay from 23-5-1974 on the post of Police Inspector. The petitioner was given promotion to the post of Police Inspector under order dated 11th September, 1990 with effect from 24th April, 1988. Learned counsel for the petitioner contended that in the year 1974 juniors to the petitioner were given promotion and, though there was no positive adversity in his service record, he has been superseded and as such he should have been given promotion from the deemed date of 23rd May, 1974.

2. In this case arguments were heard by this Court on 9th April, 1997. During the course of arguments the court has specifically put a question to the counsel for the petitioner whether the petitioner made any grievance at any stage after his supersession in the year 1974 till the filing of special civil application. The counsel for the petitioner made reference to para 4 of the special civil application and contended that the grievance was made by the petitioner against his supersession in the promotion made in the year 1974. After going through the contents of para 4 of the petition, the court was not satisfied that any representation was made by the petitioner. Whatever averments made therein are vague and incomplete. The counsel for the petitioner prayed for time to file copy of the representation made to the Department. That prayer was accepted and the matter was adjourned to 22nd April, 1997. On 22nd April, 1997 also the counsel for the petitioner has shown her inability to file any such document. The fact remains that there is nothing on record of the special civil application to show that the petitioner had made complaint about his supersession in the matter of promotion in the year 1974. It is the modus operandi of the employees of the Police Department in the State not to make any grievance against supersession in promotion till they bagged promotion. After bagging promotion they start claiming deemed date of promotion, challenging the supersession. Earlier also, in many cases this court has deprecated this practice of the employees of the Police Department of the State. Be that as it may.

3. The petitioner has right of consideration for promotion, and not right of promotion. The case of the petitioner was considered for promotion in the year 1974,

but he could not stand to merits in comparison with his juniors and as such his name was not included in the select list. The respondents have come up with the case that the criterion for promotion to the post of Police Inspector was merit and not seniority cum merit. Though the counsel for the petitioner has contended that the criterion for promotion on the post of Police Inspector at the relevant time was seniority cum merit, she has failed to produce any rule or regulation or circular or anything in support of this contention. Contrary to this, the respondents made reference in the reply affidavit to rule 53 of the Police Manual wherein it is given out that promotion to the post of Police Inspector (unarmed) has to be made on the basis of merits alone. Therefore it is not the case where the case of the petitioner was not considered for promotion. Supersession was made as the petitioner was not found to be meritorious. Even if the petitioner has average service record, he may not be given promotion and juniors can be promoted in a case where criterion for promotion is merit. Positive adversity is not a thing to be taken care of, if comparative merit has to be assessed, and whosoever is found meritorious, irrespective of seniority, he can be given promotion. Not only in 1974, but thereafter also, though departmental inquiry was pending against the petitioner, his case for promotion was considered in the year 1976 and in 1977. But in those years also he was not found meritorious and his name was not included in the select list. His name was included in the select list for the first time in the year 1979 and a person immediately junior to him in the said select list was promoted with effect from 22-4-1980 and accordingly he was given promotion from the said date. If juniors were promoted on 11-10-1974 and 24-5-1976, the petitioner did not make any grievance against those promotions. He has made grievance against his earlier supersession only after his promotion under order dated 11-9-1980, by approaching this court. Challenge to the supersession made in the year 1974 otherwise is not tenable and it suffers from unexplained delay and latches. This writ petition is filed by the petitioner about four years after his promotion. Taking into consideration the totality of the facts of this case, I do not find any justification in the claim of the petitioner for deemed date of promotion from 23rd May, 1974 on the post of Police Inspector.

4. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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